

Panaji, 20th December, 1991 (Agrahayana 29, 1913)

SERIES II No. 38

OFFICIAL GAZETTE

GOVERNMENT OF GOA

EXTRAORDINARY

GOVERNMENT OF GOA

Department of Labour

Order

No. 28/15/87-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

Subhash V. Elekar, Under Secretary (Labour).

Panaji, 18th June, 1990.

IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri S. V. Nevagi, Hon'ble Presiding Officer)

Ref. No. IT/49/87

Shri Camilo Valles — Workman/Party I
V/s

M/s. Kadamba Transport — Employer/Party II
Corporation Limited.

Workman represented by Adv. A. Nigalye.

Employer represented by Shri R. K. Pillai.

Panaji, Dated : 22-5-90.

AWARD

This is a reference made by the Government of Goa by its Order No. 28/15/87-ILD dated 16-7-1987 with an annexure scheduled thereto which reads as follows:

"Whether the action of the management of M/s. Kadamba Transport Corporation Limited, Panaji in terminating the services of Shri Camilo Valles, Driver with effect from 30-12-1983 is legal and justified.

If not, to what relief the workman is entitled to?"

The workman in this Government reference was working as a driver with the Kadamba Transport Cor-

poration, hereinafter referred to as the Corporation. The following facts do emerge after going through the statement of claim dated 8-12-87. Written Statement dated 21-11-87 and the Rejoinder dated 27-1-88. The driver was on duty on Bus No. GDX 11 on Panaji-Margao route. The bus left Panaji bus stand for going to Margao at 9.00 p. m. viz. at night time. The employer makes out a case that the driver who was probably under the influence of liquor was unable to control the bus. At Manxi while being driven in a zig-zag manner the bus left the road dashed against barrels by the side of the road. The bus was not being driven on proper side of the road. The passengers in the bus sensing trouble desired the workman to stop the bus. Even the conductor requested him to stop the bus. Still the driver drove the bus in a rash and negligent manner upto Bambolim and the passengers who were afraid of travelling in the bus cut short their journey at Bambolim and walked away. The conductor Tulsidas Palkar requested the driver not to take the bus further. Still without hearing to him the driver took the bus in a dangerous manner upto Margao though nothing significant took place between Bambolim and Margao.

On the matter being reported to the General Manager a domestic enquiry was held against the driver by issuing him a charge sheet and show cause notice. In the enquiry it was held that the driver was driving under the influence of liquor. Accepting the finding the driver was dismissed from service and the dismissal is w.e.f. 30-12-1983. It is this order of dismissal which is the subject matter of this Government reference and after going through the pleadings I framed the following issues on 22-2-88 and out of them issue No. 5 pertaining to the domestic enquiry is being treated as a preliminary issue and I have recorded the finding thereon.

1. Whether the employer proves that the workman used to report for duty in a drunken state and he used to abuse the office staff and Depot Manager and other officers in charge of the traffic operation as alleged?
2. Whether the employer further proves that inspite of repeated charge sheets and after asking for mercy on promise of not repeating the said misconduct the workman did not show any improvement and even subsequently on many occasions he used to report to duty under influence of liquor and used to behave in disorderly manner as alleged?
3. Whether the employer further proves that on the day of incident i. e. on 18-7-85 while driving the

vehicle No. GDX 11 on Panaji Margao road the workman drove the same in a zig-zag manner and this caused a fear in the minds of the passengers who got down at the Bambolim Medical College stop leaving their luggages in the bus, even though it was a last bus for Margao as alleged?

4. Whether the employer further proves that inspite of this and inspite of the warning of the conductor the workman drove the vehicle in a zig-zag manner while under the influence of liquor and dashed against the barrels kept on the driver's right side of the road as alleged?
5. If so, whether the employer proves that the workman was dismissed from services after a fair, proper and impartial domestic enquiry and following the principles of natural justice as alleged?
6. If so, whether the action of the management of M/s. Kadamba Transport Corporation Limited in terminating the services of the workman Shri Camilo Valles, driver w.e.f. 30-12-83 is just, legal and proper and whether the same calls for any interference?
7. What relief, if any, is the workman entitled to?

The Issue No. 5 regarding the Preliminary Issue on domestic enquiry was heard first and I by my order dated 13-2-89 I held that the enquiry was not fair and proper and consequently I held that the remaining issues also would be open for consideration and the parties were supposed to lead further evidence and the Corporation was supposed to prove the charge of rash and negligent driving against the workman driver. So Issues 1 to 4 relating to the conduct of the workman as a driver would be relevant for consideration now and I shall go through the evidence to see whether the charge is proved by cogent evidence and whether the order of dismissal based on this charge is just and proper in the circumstances of the case.

The evidence for the employer is that of Suryakant Naik who was the depot Manager of Porvorim depot where the workman Camilo Valles was attached as a driver. He states that there were complaints against the driver regarding irregular attendance and attending duty as a driver while under the influence of liquor. In view of the constant complaints he used to call the driver to check his conditions and if he was found drunk he used to send him home and he was marked as absent. There were many instances of this kind. On one occasion he found the driver coming for duty in a drunken state. He issued a warning to him and the driver gave an undertaking in writing saying that he would not come on duty so drunk in future. The writing dated 1-7-83 is at Exb. E-2. Therein the driver admits that he committed mistake of misbehaving with the superiors in a drunken state on 31-5-83. He has expressed regret and has assured that such mistake would not be repeated. The witness has marked on this and has issued warnings. This is evidence regarding the past conduct. I shall now see what evidence is led by the employer about the incident in question. The evidence relevant for consideration would be that of the Conductor of the bus, who was on duty along with the driver at the relevant time.

A salient feature of this case is that the domestic enquiry in which the delinquent driver was held to be guilty is already set aside by me and normally it was expected that the matter being open for consideration, the parties would lead additional evidence further to inform this Tribunal about the correct position and the position of the incident dated 18-7-83 the day on which the driver allegedly drove the bus GDX-11 in a zig-zag manner on Panaji Margao route, the bus having left

Panaji at 9.00 p. m. So this was a specific incident over which the charge sheet was issued to the workman and as the end result of the charge sheet namely the domestic enquiry is set aside the employer should have adduced evidence on this particular point of incident and obviously the evidence relevant for consideration would have been that of the conductor on the bus whose role is very important in the given circumstances. As made out by the management of the Corporation the driver of the workman was so rash and dangerous that the passengers fearing for their lives forced the driver to stop the vehicle near Medical College stop at Bambolim after the vehicle dashed against the road side barrels. All the passengers deserted the bus and the conductor exhorted the driver not to take the bus further. Still the driver dis-obeyed the conductor and took the vehicle for onward journey up to Margao but fortunately no major accident took place on the way to Margao excepting some chances where the vehicle would have dashed against the incoming vehicles. This charge is of a very serious nature and a slight evidence would have been sufficient to hold the charge as proved. However, it is rather un-fortunate that the Corporation has failed to lead any other evidence after the departmental enquiry is quashed, except the evidence of the Depot Manager S. V. Naik who is examined on 13-6-89 and cross examined on 25-7-89. Be it noted here pertinently that this witness S. V. Naik is not a witness on the point of the incident dated 18-7-83 and the relevant witness would have been the conductor Tulshidas Palker who was on duty along with the driver at the relevant time and place. It has to be noted that on this point both parties have failed. The driver on whose behalf Shri Nigalye has argued vehemently has failed to enter the witness box at the time of the hearing of the preliminary issue or at the time of fullfledged hearing of the matter on merits. It would have been of great importance and significance if the driver had entered the witness box to have his own version on the eventuality taking place between Panaji and Margao on 18-7-83. On his behalf it is admitted that the vehicle before reaching Bambolim stop had dashed against the road side barrels. So his evidence would have been relevant for consideration. However, the driver has chosen not to enter the witness box and to offer his own explanation. However, basically the burden of proving the charge is on the employer who has dismissed the workman after the departmental enquiry was over. So the evidence relevant for consideration would have been that of the conductor Tulshidas Palker who was incidentally cited by the driver as his witness but was dropped at the eleventh hour. Basically it is not the duty of the driver to examine the conductor but it was the duty of the employer to examine the conductor and if possible one or two passengers from the bus. Pertinently the conductor seems to be in the employment of the Corporation. Even now he is not examined by the Corporation for reasons best known to themselves. The lacuna is tried to be filled by examining S. V. Naik whose evidence is not relevant on the incident directly. No other passengers are examined and in my previous order while setting aside the departmental enquiry I had made observations that the evidence of this type was necessary to re-appraise the facts of the incident arising out of the alleged rash and negligent driving of the driver as basically the burden lies on the employer and issue No. 3 clearly casts burden on the employer to prove that on 18-7-83 on the day of accident the driver was driving the vehicle in a zig-zag manner and this caused a fear in the minds of the passengers who got down at the Bambolim stop by leaving their luggage in the bus even though it was the last bus from Panaji to Margao. So whatever incident had taken place was a serious one and no passenger would take the risk of getting down the bus at such odd hours by leaving their luggage in the bus. So, on this point the evidence of

any passenger or evidence of the conductor would have been relevant for consideration but the employer has failed to lead that evidence. Be it noted pertinently that after the bus reached Margao the conductor reported the matter to the Depot Manager and this report of the conductor started the machinery of the enquiry moving and the General Manager issued the charge sheet on 20-7-83 based on the report of the conductor. So after the enquiry was over the driver was dismissed and the report of the conductor was mainly responsible for the dismissal of the driver. Unfortunately, the statement of the driver as well as the conductor is not available for scrutiny and even the evidence is not available to understand what correctly happened at the time of the incident. The employer relies "on the absence of the driver" who failed to enter the witness box to point out that this is consistent with his guilt. I do not feel that such an inference is permissible as the driver might have been prevented from appearing in the court as adumbrated by Shri Nigalye who stated that the driver had met with an accident. So the employer cannot make a capital out of the non-examination of the driver but it should have lead some evidence on the point of the incident and the best evidence would have been that of the Conductor Tulshidas Palker and his evidence also would have been considered and due weight would have been given to it even if he continues to be a Corporation employee. In the circumstances he is the most independent witness but his evidence is not available for appreciation though the record shows that his evidence was available to the Inquiry Officer.

The employer relying on certain authorities of the Supreme Court on the point of Domestic Enquiry including the authority of State of Haryana V/s. Ratan Singh reported in 1982, 1 LLJ page 46 claims that in departmental enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. This is undoubtedly true and these observations would have been relevant in circumstances at the time of hearing the preliminary issue. However, by my earlier order I have already set aside the departmental enquiry and the matter is open for consideration and as observed by the Supreme Court in the above ruling "all materials which are logically probative for a prudent mind are permissible". The Supreme Court further observed that "there is no allergy to heresay evidence provided it had reasonable nexus and credibility". The Supreme Court have further cautioned the departmental authorities and administrative Tribunals that they must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. What is the essence is the essence of a judicial approach its objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. The Supreme Court further observes that "absence of any evidence in support of a finding is certainly available for the Court to look into because it amounts to an error of law apparent on the record". Following these observations of the Supreme Court most respectfully, I have to see whether the employer has led any evidence on the incident giving rise to the departmental enquiry. The employer claims that there is over-whelming evidence showing that the driver was not in a position to drive the vehicle in a straight manner and driving the vehicle in zig-zag manner is both rash and negligent. Such driving would no doubt be termed as rash and negligent but there must be somebody stating on oath that this was the position. Unfortunately, nobody who was present at the time of the incident has entered the witness box and what is produced on record is the evidence regarding the reports show cause notice, statements counter statements and the finding in the departmental enquiry. When the matter is open for consideration the Tribunal cannot base his findings

on such papers which loose relevance after the departmental enquiry is quashed, and parties are called upon to lead their evidence. It has to be noted that the employer failed to note this position and the employer failed to lead additional evidence when it was apparently clear that some evidence and the evidence of the conductor in particular was necessary. With this position, I have to see the facts to see whether the order of termination is just and proper in the given circumstances. The termination is based on two factors. The one factor is about the incident taking place on that day and the second factor is about the past conduct and record of the delinquent driver. If the management fails to prove the incident leading to the dismissal of the driver the question is whether the past record and the record showing that the driver was a habitual drunkard would be relevant for consideration to sustain the order of dismissal.

The Depot Manager of Porvorim depot by name S. V. Naik no doubt says that while the driver Camilo Valles was attached to his depot many times warnings were given to him but the workman did not improve his conduct inspite of warnings and as such his transfer to Margao Depot was recommended. According to him the workman even after admitting his own mistakes of talking loudly and reporting for duty under the influence of liquor had not improved over his conduct and subsequently to his transfer to Margao Depot he did not improve his conduct. He was transferred to Margao depot on 1-7-83. The then Depot Manager Concolienkar states that within 15 days twice the traffic staff complained about the mis-behaviour of the driver who had reported to duty under the influence of liquor. So the employer mainly relies on the evidence of the two Depot Managers about the past conduct of the workman. This evidence is no doubt of important officers of the employer and the evidence no doubt shows that the conduct of the driver was not proper in the past and he was habituated to drinking and attending duty under the influence of liquor. This evidence may be relevant for consideration in issues 1 and 2 but out of the issues, issue No. 3 is most important issue and as I have noted above no eyewitness account or evidence about zig-zag driving on 18-7-83 is led by the employer inspite of the departmental enquiry being quashed by this Tribunal. It has to be noted that the order of termination dated 30-12-83 is based on the finding of the Inquiring Authority in this incident and the Inquiry Officer has not taken into consideration the past record of the workman. This is evident from the order of termination dated 30-12-83 produced at Exb. W-4 and for the consideration of this point I reproduce the whole order as below :

ORDER

"Shri Camilo Valles, driver was charge-sheeted for the following :

1. That when he was on route Panaji-Margao on 18-7-83 the bus left at 21.00 hrs. and the driver was found driving the vehicle in a rash and negligent and zig-zag manner.
2. Due to rash and negligent driving, he dashed the bus against two barrels thereby causing damages to the body of the vehicle. Since his driving was found to be rash and negligent and he was going in a zig-zag way, passengers from the bus got down because of fear stating that he may commit an accident and that their life is in danger.
3. The conductor requested him not to drive vehicle further but he refused to do so and took the vehicle in a reckless manner to Margao.

On going through personal hearing and other hearing records, it is put beyond doubt that he drove the vehicle in a negligent and rash manner and dashed against barrels enroute.

The passengers got frightened and they got down from the bus being frightened of the accident. The conductor requested him to stop the vehicle but he refused to do so and drove the vehicle in a very dangerous manner upto Margao. In all the acts mentioned above are proved beyond doubt, he has been dismissed from the Corporation with immediate effect."

It has to be noted that the driver after receiving the order of dismissal filed an appeal to the Managing Director who dismissed the appeal by his order dated 24-5-84 and the order in appeal is reproduced below reiterating the same points :

ORDER

"This is an appeal filed by Shri Camilo Valles, Driver, Badge No. 2616, attached to Margao Depot, against the dismissal order No. KTC/Traffic/GDX-11/18/7171 dated 30-12-1983 issued by General Manager.

The brief fact of the case is that on 18-7-1983, Shri C. Valles was on the route Panaji-Margao (departure time from Panaji at 21.00 hrs.). Shri Camilo Valles drove the vehicle under the influence of liquor and thereby he dashed the vehicle (GDX-11) on the two barrels stationed at Manshi (Panaji) causing damage to the bus body.

After the bus reached at Bambolim all the passengers got down from the bus with the fear that he may commit a serious accident, as he had driven the bus in a zig-zag and rash manner.

Further inspite of the instructions given by the conductor not to take the bus any further, he took the bus to Margao.

I have gone through the enquiry papers carefully. Shri Camilo Valles was given reasonable opportunity to explain his case before the General Manager. From the records it is proved beyond doubt that the driver Shri Camilo Valles was at fault. Considering the gravity of the misconduct committed by Shri C. Valles, I have come to the conclusion that the punishment awarded was just and proper and there are no grounds for reconsideration.

I, therefore, reject the appeal and maintain the order passed by the General Manager."

So upon a careful consideration of the original order of termination and the subsequent appeal, I find that the stress is on the incident dated 18-7-83. It is rather unfortunate that the employer has failed to lead cogent evidence on this point. The issues framed by me on 22/2/88 are 7 in number but the issue No. 3 is the main and important issue and I have to record a finding whether the charge of driving the vehicle in a zig-zag manner under the influence of liquor is proved or not and I have to hold that the employer has failed to prove the charge and this is the main point involved in the Government reference. Consequently the question is whether the driver should be reinstated into service and if so what other reliefs he is entitled to. Shri Pillay in his written arguments on behalf of the employer claims that the workman has not stepped into the witness box and has not even shown whether he is holding a valid driving licence. According to him he should have entered the witness box and presented himself before the Tribunal to prove that he does not have and disability to drive the public service vehicle (stage carriage) in a public place. According to him even the

Advocate Nigalye appearing for the workman has stated before this Tribunal that the workman met with an accident and he was not able to be present in the Tribunal at the time of the hearing of the case. There is no doubt some substance in this submission made on behalf of the employer. Time and again I found that in the protracted hearing of the case right from my Predecessor for a span of about 3 years the workman has not presented himself in the Court and Shri Nigalye has taken repeated adjournments to bring his client, for entering the witness box. This is no doubt the point for consideration. However, the question is whether the inability of the workman to enter the witness box would deprive him of the relief of reinstatement into service. It may be that the driver has taken some service elsewhere. Whatever that may be this Tribunal has to take into consideration the position obtaining on 30-12-83 the day on which the services of the workman were terminated. All these facts may be relevant for consideration not to grant other reliefs such as payment of back wages and other compensation. I feel that the workman is not entitled to back wages or any compensation as his claim for salary would start the moment he is reinstated into service. This is what can be said about the unsatisfactory conduct of the Party I/Workman but otherwise the order of termination is un-sustainable. I, therefore answer the above issues accordingly and so far as the issue No. 3 is concerned I hold that the employer has failed to prove that the driver at the time of the incident on 18-7-83 was driving the vehicle No. GDX-11 on Panaji-Margao route in a zig-zag manner and under the influence of liquor causing fear and panic in the minds of the passengers in the bus. This is the main issue and it is the crux of the whole matter as the employer failed to prove charge on this issue the relief of reinstatement simplicitor will have to be granted to the workman in the given circumstances. The finding on other issues would not be much relevant for consideration because issues 1 and 2 relate to the charges of drunkardness prior to this incident and they are not much relevant for consideration because the order of termination dated 30-12-83 is based on the main incident on 18-7-83 and the employer has failed to lead proper evidence in proof of this main charge. Consequently the order of termination would have to be set aside and the relief of reinstatement simplicitor will have to be granted to the workman. In the result, I answer the above issues accordingly and pass the following order :

ORDER

It is hereby held that the action of the management of M/s. Kadamba Transport Corporation Limited, Panaji, Goa, in terminating the services of Shri Camilo Valles, Driver, w.e.f. 30-12-1983 is neither legal nor justified in the given circumstances.

By way of relief the driver is granted the relief of reinstatement simplicitor and the employer Corporation is directed to issue a notice to the workman and to re-employ him into service as a Driver on the same terms and conditions which were obtaining on 30-12-83. The Driver will be entitled to the wages from the day on which he rejoins the service of the Corporation and he will get all other benefits as a Driver of the Corporation.

This is the only relief which the Driver is entitled to in the given circumstances and he is not granted any other relief so far as back wages, compensation etc., are concerned. To make the point clear it is held that

the driver is entitled to the relief of reinstatement into service simplicitor and he is not entitled to any other relief.

There shall be no order as to costs. Inform the Government accordingly about the passing of the award.

S. V. Nevagi
Presiding Officer
Industrial Tribunal.

Order

No. 28/64/89-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

L. J. Menezes Pais, Under Secretary (Labour).

Panaji, 24th May, 1990.

IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri S. V. Nevagi, Hon'ble Presiding Officer)

Ref. No. IT/90/89

Workmen — Party I/Workmen
V/s
Mrs. Prayag Rubber Pvt. Ltd. — Party II/Employer
Workmen represented by Shri R. Mangueshkar.
Employer represented by Adv. B. G. Kamat.

Panaji, Dated : 3rd May, 1990.

AWARD

This is a reference made by the Govt. of Goa, by its order No. 28/64/89-LAB dated 15th December, 1989 with an annexure scheduled thereto which reads as follows :

"Whether the action of the management of M/s. Prayag Rubber Private Limited, Sancoale Industrial Estate, Zuarinagar, Goa, in refusing to concede to the following demands of the workmen represented by the Goa Trade & Commercial Workers' Union is legal and justified ?

DEMANDS

Demand No. I :

Pay Scales and Grades :— It is demanded that the following Pay-scales and Grades be introduced after assessing the work of each workman as per the designation and work input.

Grade	Designation	Pay-Scale
I	Mc. Fitter/Mc. Operator	500-20-600-30-750-40
	Mc. Operator/Electrician	5 5 5
	Mixing Mc. Operator,	
	Moulding Mc. Operator,	-950-30-1200
	Mixing Mill and Asstt.	5
II	Op., Boilerman Punching-Man.	
	Helper	450-15-525-20-625-25
		5 5 5
		-750-30-9(10)
		5

Demand No. II :

Flat-Rise and Fitment :— It is demanded that each workman be given Flat-Rise of Rs. 200/- per month over and above the salary drawn by each of them as on 31st December, 1987. The total of Rs. 200/- plus the monthly salary drawn by each of them as on 31st December, 1987, shall be fitted on to the pay-scales, as given in Demand No. I.

Demand No. III :

Variable Dearness Allowance :— It is demanded that each workman be paid a Variable Dearness Allowance at the rate of Rs. 1/50 per point rise over and above All India Consumer Price Index (1960-100) neutralised at 700 points. The Variable Dearness Allowance shall be computed and paid every month of the averages of the proceeding quarter of the AAICPI figures (1960-100).

Demand No. IV :

Fixed Dearness Allowance :— It is demanded that each workman be paid a Fixed Dearness Allowance of Rs. 250/- per month towards Fixed Dearness Allowance.

Demand No. V :

House Rent Allowance :— It is demanded that each workman be paid a House Rent Allowance at the rate of 10 percent on the basic salary.

Demand No. VI :

Travelling and Sundry Allowance :— It is demanded that each workman be paid a Travelling and Sundry Allowance of Rs. 100/- per month.

Demand No. VII :

Shift-Allowance :— It is demanded that each workman be paid a Shift-Allowance of Rs. 2/- per shift.

Demand No. VIII :

Leave-facilities :— It is demanded that each workman be eligible to the following leave facilities.

Privilege-Leave	... of 30 (thirty) days.
Casual-Leave	... of 10 days p. a.
Sick-Leave	... of 10 days p. a.
Paid Holidays	... of 12 days p. a.

Demand No. IX :

Uniforms and Washing-Allowance :— It is demanded that each workman be issued three pairs of uniforms and paid Rs. 25/- per annum towards washing-allowance.

Demand No. XI :

Rain Wear :— It is demanded that each workman be supplied with rain wear.

"If not, to what relief the workmen are entitled?"

The above Government reference pertaining to the charter of demands raised by the union came to be made to this Tribunal and as per the Claim Statement Exb. 2 the union had justified the demands made by it on behalf of the workmen and had claimed that the company was in a fit and financial position to meet the demands. While the matter was adjourned for the filing of the W. Statement by the management the parties have settled the matter and the memo of settlement presented before me today is read and recorded before me today and I am supposed to pass a consent award in terms of the settlement. The Company was claiming that it was running at losses and only 20 days work in a month was available. However, as per the mutual understanding the union has modified some of its demands and the company has accepted them. I am therefore passing the following award as per the terms of the settlement, and I pass the following order :

ORDER

The following demands made by the union with the company are granted :

1. The annexure 'A' appended to the Memo of Settlement shall form a part of this award and the scales of fitment and gradation are fixed as follows :

1. Mixing Mill Operator — Rs. 950-75-1250-100-
(Min. experience 10 yrs) —1550
2. Foreman — Rs. 625-50-925-75-1300
3. Jr. Mixing Mill — Rs. 625-50-925-75-1300
Operator (Min. experience 5 yrs).
4. Machine Operator — Rs. 450-40-720-50-1020
5. Asst. Machine Operator — Rs. 375-25-475-35-630-
—50-1050
6. Helper — Rs. 360-20-600-30-900.

2. The workmen of the company shall be fitted in the grades as shown above and they would get one increment on their existing salary as on 1-9-88 and thereafter they be given one increment every year and additionally fixed dearness allowance of Rs. 40/- during the period of the settlement which is upto 1-9-92. The working of the Fitment of the workmen as stated above is fixed and the same would be worked out in the concluding paragraph.

3. The amount of difference arising out of the present settlement shall be paid to the workmen in four equal instalments and the first instalment shall be payable on or before 20-4-1990, second instalment payable on 20-5-90, the third instalment payable on 20-6-90, and the balance shall be paid on 20-7-90.

4. About leave the workmen will be given P. L. as per the Act. Additionally, they will be eligible for 7

days C. L. and 5 days sick leave in a year. Additionally the workmen shall be given 8 paid holidays in a year and the holidays will be decided mutually at the beginning of the year.

5. Provision for tea : The present facility of supplying tea two times a day shall continue. The workmen should not leave the place of work for taking tea and the tea should be supplied to them at their place of work, to avoid possible loss of work.

6. Washing Allowance : Instead of washing allowance the management shall supply one bar of soap to every worker for every month.

7. Uniforms : The management shall supply two sets of uniforms every year to each worker from 1-4-90.

8. The claim for house rent allowance and travelling allowance is dis-allowed.

9. V. D. A. : The claim for V. D. A. is also dis-allowed.

10. Working and discipline: The workmen in general shift shall start their work at 8.30 a. m. and stop their work at 5.00 p. m. with a lunch break/recess for half an hour. The workmen shall be allowed to stop work five minutes earlier to wash themselves. The first shift shall start at 7.00 a. m. and stop at 3.30 p. m. with a lunch break/recess for half an hour. The second shift shall start at 3.30 p. m. and stop at 11.30 p. m. with a similar dinner break/recess of half an hour. Similarly, in these two shifts the workmen will be allowed to stop the work five minutes earlier to wash themselves.

The workmen working in any shift shall work as per the directions of the supervisors and they shall maintain discipline and shall work for obtaining maximum production.

11. The above demands of the workmen from out of the charter of demands are granted as per the settlement and any other demands made in the charter of demands shall be treated either as dropped or as withdrawn.

12. The Union/Workmen shall not raise any other demands involving financial liabilities on the management during the duration of the settlement and the settlement shall be in force from 1-9-1988 till 31-12-1991 and it may even continue thereafter if either of the parties do not terminate the same with due notice.

13. The working of the fitment of the workmen is fixed as below :

Grade	Name	01-09-1988	01-09-1989
Machine	1) Pralhad Shinde	475/-	515/-
Operator		40/-	40/-
		40/- 515/-	40/- 595/-
		01-09-1990	01-09-1991
		595/-	675/-
		40/-	40/-
		40/- 675/-	40/- 755/-

Asst. Machine Operator	1) Sanjay Bhappardekar	400/- 25/- 425/- 500/- 25/- 40/- 565/-	425/- 35/- 565/- 25/- 40/- 630/-
	2) Krishna Kalgutkar	400/- 25/- 425/- 500/- 25/- 40/- 565/-	425/- 35/- 565/- 25/- 40/- 630/-
	3) Dishember Nagekar	450/- 25/- 475/- 540/- 25/- 40/- 605/-	475/- 25/- 605/- 25/- 40/- 670/-
	4) Subhas Pagi	400/- 25/- 425/- 540/- 25/- 40/- 605/-	425/- 35/- 605/- 25/- 40/- 670/-
	5) Motiram Karande	400/- 25/- 425/- 490/- 25/- 40/- 555/-	425/- 25/- 555/- 25/- 40/- 620/-
	6) Mahadev Karande	400/- 25/- 425/- 490/- 25/- 40/- 555/-	425/- 25/- 555/- 25/- 40/- 620/-
	7) Sudam Ghodse	400/- 25/- 425/- 490/- 25/- 40/- 555/-	425/- 25/- 555/- 25/- 40/- 620/-

The above consent award is passed by me today as per the terms of the settlement and shall remain in force as stated above.

Inform the Government accordingly about the passing of the award.

There shall be no order as to costs.

S. V. Nevagi
Presiding Officer
Industrial Tribunal.

Order
No. 28/50/89-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.
Subhash V. Elekar Under Secretary (Labour).
Panaji, 20th July 1990.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI
(Before Shri S. V. Nevagi, Hon'ble Presiding Officer)
Ref. No. IT/71/89
Shri Fausto D'Sa & 4 others Workmen/Party I
V/s
M/s. Victor Die Sets Employer/Party II
Workmen represented by Adv. P. J. Kamat.
Panaji, Dated : 9-6-1990.

AWARD

This is a reference made by the Govt. of Goa, by its order No. 28/50/89-LAB dated 26th September, 1989 with an annexure scheduled thereto which reads as follows:

"Whether the action of the management of M/s. Victor Die Sets, Tivim Industrial Estate, Karaswada, Mapusa-Goa, in terminating the services of their workmen, namely S/Shri Fousto D'Sa, K. Vishwanath, K. N. Satheesan, Salvador D'Souza and Martin Pereira with effect from 9th March, 1989 is legal and justified.

If not, to what relief the workmen are entitled ?"

As seen from the above reference, the five workmen were terminated from service by the employer w.e.f. 9th March, 1989. From the claim statement Exb. 2 filed by them and from the recorded evidence of the workmen I find that the Party II/Factory is a partnership firm and its partners were Victor Kaunds and John Edmand Vincent. On that day while these 5 workmen were on duty the partner John Vincent went to the factory and informed the workmen that he was going to close down the factory unit at Tivim Industrial Estate and that the workmen should go home. So all the 5 workmen who were then working were turned out unceremoniously without any notice and without paying any retrenchment compensation. The remaining 3 workmen who were brought from Bombay were sent back to Bombay about one month before that. This is how the partner turned out the five workmen locked the unit and walked away. The 5 workmen then raised the industrial dispute and the government reference came to be made. The Opponent firm represented by its partners remained absent after taking one or two adjournments and the evidence of the workmen is being recorded to understand their case.

On the showing of Fousto D'Sa who speaks on behalf of the other four workmen and himself that the factory unit is closed down and when they questioned the factory partner about that the partner on the very day gave them in writing Exb. 3 (W) under his signature and the rubber stamp of Victor Die Sets that he would pay the necessary legal dues to these five workmen in due course of time. The unit is closed, admittedly. So there is no question of reinstatement into service. So this is a case falling u/s 25F of I.D.A. and obviously the management has not complied with sub-clauses (a) & (b) of that Section. So, each of the 5 workmen will be entitled to retrenchment compensation and I grant them the relief as contemplated under sub-clauses (a) & (b) by awarding the compensation to them.

As stated under section 25F sub-clause (a) the workmen would be entitled to notice pay of one month. Under sub-clause (b) they shall be entitled to retrenchment compensation equivalent to 15 days average pay for every completed year of continuous

service or part thereof in excess of six months. There is no question of reinstatement into service as the unit is already closed. Hence I work out the compensation payable to each workman on the basis of the claim statement Exb. 2 and the chart Exb. 4 (W) presented by them in court on the day of hearing.

1. *Fausto D'Sa:*

- | | |
|-----------------------------------------------------------------------------|-------------|
| a. One month's salary in lieu of notice... | Rs. 875.00 |
| b. Salary for 9 days | Rs. 269.25 |
| c. He joined service on 2.2.81, So
retrenchment compensation for 9 years | Rs. 3937.50 |
| Total | Rs. 5081.75 |
| rounded at Rs. 5082.00 | |

2. *Shri K. Vishwanath :*

- | | |
|--------------------------------------------------------------------------------------|-------------|
| a. One month's notice pay... | Rs. 1000.00 |
| b. 9 days salary | Rs. 307.70 |
| c. He joined service in March, 1979,
So retrenchment compensation
for 11 years | Rs. 5500.00 |
| Total | Rs. 6807.70 |
| rounded at Rs. 6808.00 | |

3. *Shri K. N. Satheesan :*

- | | |
|-----------------------------------------------------------------------------------|-------------|
| a. One month's salary in lieu of notice... | Rs. 750.00 |
| b. 9 days salary | Rs. 223.00 |
| c. He joined service on 15.1.1981,
So retrenchment compensation
for 9 years | Rs. 3375.00 |
| Total | Rs. 4348.00 |

4. *Shri Salvador D'Souza :*

- | | |
|-----------------------------------------------------------------------------------|-------------|
| a. One month's salary in lieu of notice... | Rs. 725.00 |
| b. 9 days salary | Rs. 215.40 |
| b. He joined service in October, 1981
retrenchment compensation for
8 years | Rs. 2900.00 |
| Total | Rs. 3840.40 |

5. *Shri Martin Pereira :*

- | | |
|-------------------------------------------------------------------------------------------------|-------------|
| a. One month's salary in lieu of notice... | Rs. 600.00 |
| b. 9 days salary | Rs. 184.60 |
| c. He joined service in August, 1984,
So retrenchment compensation for
5 and a half years | Rs. 1650.00 |
| Total | Rs. 2434.60 |
| rounded at Rs. 2435.00 | |

The above amounts are due and payable to the five workmen as provided u/s 25F sub-clauses (a) & (b). In their chart the workmen have claimed gratuity separately. The retrenchment compensation is the gratuity and no other gratuity is payable to them under law. Similarly they have claimed leave encashment for 45 days. For claiming leave encashment there must be a specific contract and the record showing that the earned leave was admissible to the

workmen and they had not enjoyed the same though admissible. The claim for leave encashment is not a statutory right but it is a right governed by the service contract. In the absence of any proof this claim is not admissible. The workmen Fousto D'Sa in his evidence does not say a word about the earned leave that was available to him and the co-workers and whether they had not availed of the same. So, I disallow this claim also. I hold that the order of termination which amounts to retrenchment is not just and legal and the requisite retrenchment compensation was not paid to them. I, therefore answer the above government reference accordingly and pass the following order :

Order

It is hereby held that the action of the management M/s. Victor Die Sets, Tivim Industrial Estate, Karaswada, Mapusa-Goa, in terminating the services of their workmen S/Shri Fousto D'Sa, K. Vishwanath, D. N. Satheesan, Salvador D'Souza and Martin Pereira with effect from 9th March, 1989 is neither legal nor justified.

By way of relief the workmen are not entitled to reinstatement as the unit is closed and they are entitled to retrenchment compensation as required u/s 25 F sub-clauses (a) & (b) of I.D.A., 1947.

The five workmen are entitled to retrenchment compensation as stated below:

- | | |
|---------------------|-----------------------------------------------------------------------|
| 1. Fausto D'Sa | Rs. 5082.00 (Rupees five thousand and eighty two only) |
| 2. K. Vishwanath | Rs. 6808.00 (Rupees six thousand eight hundred and eight only) |
| 3. K. N. Satheesan | Rs. 4348.00 (Rupees four thousand three hundred and forty eight only) |
| 4. Salvador D'Souza | Rs. 3840.00 (Rupees three thousand eight hundred and forty only) |
| 5. Martin Pereira | Rs. 2435.00 (Rupees two thousand four hundred and thirty five only) |

The management shall pay the amount of compensation within one month from today failing which interest at 12 percent per annum shall be payable until the final payment is made.

There shall be no order as to costs. Inform the govt. accordingly about the passing of the award.

S. V. Nevagi,
Presiding Officer,
Industrial Tribunal